

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Chang v. Mason*, 2023 NSSM 8

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

**Date:** 20230315

**Claim:** No. SCT511987

**Registry:** Truro

**Between:**

I Ju Chang

APPELLANT

and

Carman and Margaret Mason

RESPONDENTS

**Adjudicator:** Julien S. Matte, Adjudicator

**Heard:** January 31, 2023 (via teleconference)

**Appearance:** I Ju Chang, self-represented, for the Appellant  
Carman and Margaret Mason, represented by David Brush, for the Respondents

Savanna Wang, Interpreter

**Matte, Adjudicator,**

1. This is an Appeal of an Order of the Director of Residential Tenancies awarding the Respondent tenants \$1,086.15. The appeal before this Court is on the narrow issue of whether the Appellant received notice of the hearing before the Director of Residential Tenancies. The Appellant asks the Court to overturn the decision of the Director and award expenses incurred by the Appellant totaling over \$1660.00 on the basis that the procedures before the Director and this Court are discriminatory. The Respondents are asking the Court to dismiss the appeal and confirm the Order of the Director on the basis that all required procedures were followed.
2. The facts surrounding the Notice of Hearing and the only ground of appeal before this Court are not contested. The testimony of the Respondents as evidence by exhibits tendered showing that registered mail was sent to the Appellant in September 2021 but returned to the Respondents undelivered confirms the Appellant's primary contention that she did not receive a Notice of Hearing for the October 6, 2021 hearing before the Director. The Respondents testified that they were told that the initial tenancy officer scheduled to hear the matter was changed. On the advice of the Residential Tenancy Office, the Respondents resend the Notice of Hearing on September 17, 2021 to the Appellant to advise of the change. The second Notice of Hearing was returned as undelivered.
3. As a result, and as confirmed by the Order of the Director, the Appellant was not present at the October 6, 2021 hearing where the Appellant was ordered to pay the sum of \$1,086.15. The Appellant testified that she first became aware of the Respondents' claim when a Sheriff delivered documents to her.
4. At the hearing before this Court, the Appellant confirmed her address, the same address on the returned registered mail, Order of the Director and as noted by the Respondents on the residential tenancy lease at issue.
5. Outlined in written and oral submissions before this Court, the Appellant claims that she has been discriminated against contrary to the *Nova Scotia Human Rights Act* and the

*Canadian Charter of Rights and Freedoms*. The complaints surround the procedures of this Court and before the Director. The claimed discrimination is for:

- (a) The lack of notice for the hearing;
- (b) The procedures taken to enforce the Director's Order;
- (c) The absence of the Respondents at the initial hearing in December 2022;
- (d) The Court's acceptance of the Respondent's defense more than 20 days after the Claim was served;
- (e) The Court's change in the file number;
- (f) The Court's continued hearing despite raised issues noted above;

## **Analysis**

6. The parties come before this Court by reason of their former relationship as landlord and tenants. In Nova Scotia, the relationship of landlords and tenants is government by law, namely the *Residential Tenancy Act* and its *Regulations*. As noted in section 1A, the purpose of the *Act* is to "provide landlords and tenants with an efficient and cost-effective means of settling disputes." Where a dispute arises between the landlord and her tenants, an application is made to the Director as per s. 13 of the *Act* as was done here. Depending on the nature of a dispute either a landlord or tenant can make an application.

7. The substance of the dispute, although not before this Court, is the allegation that the Appellant change the rate charged under the lease from one including electricity to one requiring the Respondents to pay for their own electricity by unilaterally switching over the electrical system. Had the Respondent wished to remain in the unit, the Respondents would have had to open an account with Nova Scotia Power and start paying for the electricity directly. Instead, the Respondent left and filed an application under the *Act*.

8. Relevant to this matter are the notice provisions under section 13 of the *Act* and in particular 13(1)(b) which allows an application where there is an allegation of a breach of the lease. According to the Order of the Director the application occurred well within the timeline noted in section 13(1) of the *Act*. In accordance with s.13(2), the applicant (Respondents) were

required to serve the respondent (Appellant) within seven days or as prescribed by the Director or under the *Regulations*.

9. The manner of service is described in s. 2A of the *Act*. While s. 2A(a) and (b) gives a tenant serving a landlord the choice of using personal service on the landlord or its representative, a tenant may also effect service in accordance with s. 2A(c) as follows:

Where a party is a landlord, sending it to the landlord by prepaid registered mail, prepaid express post or prepaid courier service to an address

- i. stated in the lease,
- ii. where the landlord carries on business as a landlord, or
- iii. where rent is payable

10. Further s. 2B notes that:

Where a document is sent by registered, express post or courier service under this Section, it is deemed to have been served on the third day after the mailing, and service may be proved by providing evidence that the notice or document was prepaid and properly addressed and sent.

11. The receipt showing the Canada Post Registered Mail with corresponding tracking number is dated September 17, 2021. The corresponding returned envelop with the Truro Post Office Stamp dated September 17, 2021, and with the Appellants name and address and the Respondents return address indicated on its face also has a stamp and a sticker affixed to it. The stamp shows that the Card was left on September 21, 2021, a Final Notice was left on September 25 2021 and the envelop was returned to the sender on October 5, 2021. The sticker shows that the item was returned because it was unclaimed. With the envelop is a one page document entitled “Notice of Hearing” with the date of October 6, 2021 at 9:30am as the date of hearing.

12. The Order of the Director dated October 19, 2021 finds that “the landlord, IJu Chang although served with the Application to Director and notice of hearing by Carman Mason was not present”.

13. According to the Respondents, this was the second time they sent the Notice of Hearing but only the documents of the second attempt were provided. The Court is satisfied that the Respondent sent the Notice of Hearing to the Appellant by registered mail on September 17, 2021. It is clear from the evidence that the Notice of Hearing was never picked up by the Appellant and therefore was never received. However, receipt and service are not synonymous under the *Act*.

14. Pursuant to s.2B, a document sent by registered mail, as was done here, is deemed to be served three days after being sent. This means that by sending the documents by registered mail, the sender fulfills his obligation to serve the Notice of Hearing. There is no requirement under the *Act* to prove that the other party has in fact received the document. Under the *Act* the Notice of Hearing was served on September 20, 2021 as found by the Director.

15. The Appellant testified that she was out of country at the relevant time. While the Court may sympathize, the reality of a landlord and tenant relationship is that arrangements have to be made to allow parties to deal with issues as they arise. Given the nature of the relationship it is not uncommon that emergencies require immediate attention. It would have been incumbent on the Appellant to provide alternative contact information if she could not be reached at the address provided in the lease, a requirement of s.7(6) of the *Act*.

16. The deeming of service may appear unfair, but it is not discriminatory as it is applied to all persons whether landlords or tenants under the *Act*. The legislature has chosen to allow service in this manner in accordance with the *Act*'s purpose of providing a cost effective and efficient means of dispute resolution.

17. This Court's jurisdiction is similarly set out in the *Small Claims Court Act* and its *Regulations* with its purpose defined at s.2 as :

It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice

18. The Appellant expressed concerns with respect to the application of the *Small Claims Court Act*. The enforcement of an Order issued without the Appellant's apparent knowledge also may seem unfair. However, the enforcement of court orders is an integral part of our system of justice. The Appellant did not provide any submissions or evidence as to how applying these provisions was discriminatory simply stating that the enforcement of the Order was itself discrimination.

19. With respect to the Court's procedure, the Appellant complains that the Respondents did not show up to the initial preliminary hearing that was scheduled for December 12, 2022 as noted on the Notice of Claim as issued by the Court. However, as noted by the Respondents and confirmed by the file information, the initial assigned adjudicator declared a conflict of interest preventing the hearing from proceeding. The matter was re-scheduled for January 16, 2023 before another adjudicator. While the delay is unfortunate, it was necessary to ensure the integrity of the process and assign an adjudicator that could hear the matter.

20. The Appellant also says that the file number for this matter was changed by Court staff without her knowledge and that this act is discriminatory. The Court staff advised the Appellant that there was a clerical error in assigning a court file number, an error that was corrected and which resulted in a different file number being assigned. The Court's numbering system does not affect the rights of the parties before it and forms a necessary part of the administration of the Court.

21. Finally, the Appellant questions why the Respondents were allowed to file a Defence in Form 2 more than 20 days after they received the Appellant's Notice of Claim. The Notice of Claim was filed on November 7, 2022, served on November 7, 2022 for Margaret Mason and on November 15, 2022 for Carman Mason. The Defence was filed on December 14, 2022.

22. Contrary to s.5 of the *Small Claims Court Forms and Procedures Regulations* the Respondents failed to serve their Defense within the 20 days allowed. However, simply because a defense is not filed, does not entitle a Claimant or Appellant to obtain the order they are requesting. In accordance with s. 23 of the *Small Claims Court Act*, where a Defendant has been served and has not filed a Defense, an adjudicator who is satisfied that the Claimant

has proven their claim can issue the requested order. However, as per s.23(2) where a Defendant can show a reasonable excuse for failing to file a defense and appears before the court without unreasonable delay after the order is issued, the court will be set a hearing on the merits. No claimant or appellant appearing before this Court is automatically entitled to an order regardless of whether a defense is filed within the prescribed time.

23. Here, the Respondents did file a Defense two days after the originally scheduled hearing and well before the preliminary hearing on January 16, 2023 at which the Respondents appeared. The delay of the proceeding from December 12, 2022 to January 16, 2023 was due to the declared conflict of the first assigned adjudicator. Given the operation of s.23, even if the Court had issued an Order on December 12, 2022, it is plain and obvious that the Order would have been set aside as soon as the Defence was filed and a hearing requested by the Respondents. The late filing of the Defense resulted in no prejudice or unfairness to the Appellant. The claimed discrimination for an event beyond the Court's control is without merit.

24. The evidence shows that the Appellant was deemed to be served with the Notice of Hearing as per the provisions of the *Act*. The unfairness that resulted could have been avoided had the Appellant advised the Respondents of her contact information during her absence from the country, as is required under the *Act*. The provisions of the *Act* and the *Small Claims Court Act* apply to everyone equally and aim to balance the need for efficiency with due process. That balance was achieved here by the Order of the Director.

## **Order**

25. The Appeal is dismissed, and the Order of the Director dated October 19, 2021 is affirmed.

Julien S. Matte, Adjudicator